

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ANTHONY CARROLL,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:18-cv-1945-RWS
	)	
STANLEY PAYNE,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

On October 1, 2020, I issued a memorandum and order denying Anthony Carroll habeas relief but granting him a certificate of appealability on one count raised in his petition. On October 8, 2020, Warden Payne filed a Rule 59(e) motion for reconsideration contesting my grant of the certificate of appealability. I will deny the motion.

Payne argues that I should not have granted the certificate of appealability after finding that both of Carroll's claims were procedurally defaulted. However, when "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, *and*...jurists of reason would find it debatable whether the district court was correct in its procedural ruling," a certificate of appealability may be granted. Khaimov v. Crist, 297 F.3d 783, 786

(8th Cir. 2002) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

In my order, I concluded that Carroll's claims were procedurally defaulted and that neither the cause and prejudice nor the fundamental miscarriage of justice exceptions applied to excuse the default. Reasonable jurists could debate whether my ruling was correct. For that reason, the certificate of appealability as to Carroll's claim regarding the trial judge's remarks at sentencing was not improperly granted under current Eighth Circuit precedent.

Accordingly,

**IT IS HEREBY ORDERED** that Stanley Payne's Rule 59(e) motion, [28] in Docket No. 4:18 CV 1945 RWS, is **DENIED**.

A handwritten signature in black ink, appearing to read "Rodney W. Sippel", is written over a horizontal line.

RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 20th day of October, 2020.